

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3835

IN THE MATTER OF:

Served October 23, 1991

Formal Complaint of AIR COURIERS )  
INTERNATIONAL GROUND TRANSPORTATION )  
SERVICES, INC., Trading as )  
PASSENGER EXPRESS Against MADISON )  
LIMOUSINE SERVICE, INC. )

Case No. FC-90-02

By Order No. 3810, served August 30, 1991, after notice and hearing, the Commission, inter alia, found Madison Limousine Service, Inc. (Madison), to have engaged in wilful and knowing violations of the Compact and Commission regulations and revoked Madison's Certificate of Authority No. 132.

By petition timely filed on September 27, 1991, Madison seeks reconsideration of Order No. 3810. Air Couriers International Ground Transportation Services, Inc., trading as Passenger Express timely filed a reply to the petition for reconsideration on October 8, 1991. In support of its petition, Madison asserts:

I. The record does not support the Commission's finding of continued unauthorized service to Pan Am.<sup>1</sup> (Petition, p. 2)

A. The Commission's order of June 4, 1990, was ambiguous and Madison did not "knowingly and willfully" violate its terms. (Petition, p. 2)

B. Madison's service to Pan Am after July 8, 1990, was not a continuation of regulated contract operations. (Petition, p. 5)

II. The Commission's erroneous factual findings resulted in the imposition of too severe a penalty. (Petition, p. 7)

A. Standing alone, Madison's other violations do not warrant revocation of its certificate. (Petition, p. 8)

The petition correctly characterizes the Commission's Order No. 3510, served June 4, 1990, as:

. . . directing Madison 'to cease and desist from transportation covered by the Compact' (except to the extent its service for Air France remained authorized under Authorization No. SP-132-03). (Petition, pp. 2-3)

However, the petition goes on to argue that the order was ambiguous because it did not say "effective immediately" as did the later Order

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<sup>1</sup> Pan American World Airways, Inc.

No. 3810, which revoked Madison's operating authority entirely. First of all, Madison did not have Order No. 3810 for comparison at the time it received Order No. 3510. Moreover, on June 4, 1990, Commission Rule 7-03 provided that:

Orders of the Commission shall be effective as of the dates of service, unless otherwise specifically provided in the orders.<sup>2</sup>

Accordingly, Order No. 3510 was not "ambiguous" as to its effective date, and the raising of this erroneous argument, even at this late date, serves only to underscore the Commission's conclusion in Order No. 3810 that Madison could not be found "fit, willing, and able to conform to the provisions of the Compact and conform to the rules, regulations, and requirements of the Commission." (Order No. 3810, p. 8)

The record does support the finding that Madison knowingly and wilfully continued to engage in unauthorized operations for Pan Am and for others. The petition argues that Mr. Hajoun, Madison's president, was uncertain what to do about terminating service to Pan Am after receiving Order No. 3510, and quotes Mr. Hajoun quoting himself in this excerpt from the hearing transcript:

I said 'I will do my best to help you (Pan Am). Really I am not suppose today do it with the Transit Commission.' And I was caught between two. I don't know whether to do it. It was whether to do this or this. (Petition, p. 4, and Transcript, pp. 90-91, emphasis added)

Bearing in mind that Madison, itself, raised this transcript excerpt in its petition for reconsideration, it shows, if anything, that Madison knew what it was supposed to do; it just had not decided what it was going to do.

The petition argues that the decrease in the dollar amounts that Madison billed to Pan Am, which decrease occurred more than a month after Order No. 3510 was issued, proves in and of itself that the service was not an "unbroken continuation of regulated contract operations." It argues that after July 8, 1990, such service was "sporadic" and "virtually always involved trips to Andrews Air Force Base in Maryland," and that these operations constituted "bona-fide taxi cab services." (Quotations from Petition, pp. 5-7)

Standing alone, these billing figures show only that Madison continued billing Pan Am for services rendered, and this evidence was considered with the other evidence. Even if such services were "sporadic" and "virtually always" to Andrews Air Force Base (which is in the Metropolitan District) these attributes do not indicate that the service was beyond the reach of the Compact and in no way

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<sup>2</sup> The Commission's Rules were subsequently revised and reissued by Order No. 3600, served January 17, 1991. However, this rule in substantially the same language remained as Rule 7-03.

contradict the Commission's finding that such services were conducted without the necessary operating authority. In addition, Order No. 3810 concluded that the "service performed by Madison after June 4, 1990, . . . was an unbroken continuation of the (Pan Am) contract operation . . . ." (Order No. 3810, p. 6, emphasis added) The petition treats the period between June 4 and July 8 as if Order No. 3510 somehow authorized for over a month the very service it was directing Madison to stop because it was not authorized.

Next, the petition minimizes "Madison's other violations" involving "All Nippon, Aeroflot and Lufthansa" as not warranting revocation of Madison's operating authority, standing alone. The petition charges that the Commission "failed to consider the mitigating circumstances surrounding service to the other airlines." (Quotations from Petition, p. 8)

The Commission's judgment in this case is based on the entire record, and we see nothing in this petition for reconsideration to cause us to modify that judgment. We found no mitigating circumstances in our original decision, and we see none here. On the contrary, we are now told by way of mitigating circumstances that:

. . . the Commission should bear in mind that Madison's "unauthorized" services for Aeroflot and All Nippon took place only in the first four months of 1991 . . . . (Petition, p. 8, emphasis added)

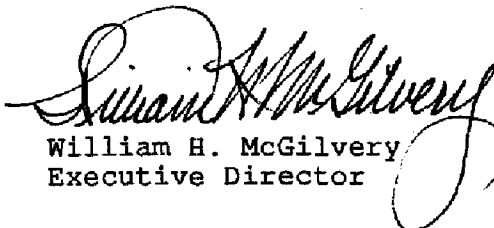
and that:

Madison had, of course, not been able to file a contract tariff for service to Aeroflot because the Soviets had refused to sign a written contract. (Petition, p. 9, fn. 14, emphasis added)

Such assertions can only serve to reinforce our decision in Order No. 3810.

THEREFORE, IT IS ORDERED that the petition of Madison Limousine Service, Inc., for reconsideration of Order No. 3810, served August 30, 1991, is hereby denied.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS DAVENPORT, SCHIFTER, AND SHANNON:

  
William H. McGilvery  
Executive Director